

1 **EDWARD E. COREY (SB #124900)**

2 **COREY & COREY**

3 3580 Wilshire Boulevard
17th Floor
4 Los Angeles, CA 90010
(213) 385-7003
(213) 385-6908 Fax

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6 Counsel for SHAGHAI WIN-WING IMP. &
7 EXP. CO, LTD., Plaintiff.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

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11 SHAGHAI WIN-WING IMP. &) No. 08-CV-02031-SC
12 EXP. CO, LTD.,)
13 Plaintiff,) **PLAINTIFF'S APPLICATION FOR**
14 vs.) **AN ENTRY OF DEFAULT**
15 TETSUYA WATANABE, OAKHILLS) **PURSUANT TO FED. R. CIV. P.**
16 HARDWOOD FLOORS, INC., K&T) **55(a); DECLARATION OF**
17 ASSOCIATES, INC.) **EDWARD COREY IN SUPPORT**
18 Defendants.) **THEREOF**

19 Now comes Plaintiff Shanghai Win-Wing Imp. & Exp. Co.

20 (hereinafter "Plaintiff"), by and through counsel, and applies to
21 the Court and its Clerk for an Entry of Default against the
22 Defendants **Tetsuya Watanabe, Oakhills Hardwood Floors, Inc.** and
23 **K&T Associates, Inc.** (hereinafter collectively "Defendants").

24 The reasons for this Request are as follows.

25 On April 18, 2008, Plaintiff filed a Complaint against
26 Defendants in this matter. See Docket Entry #1. Declaration of
27 Edward E. Corey, ¶ 2. On June 14, 2008, Defendants were served
28 with a Summons and the Complaint. See Docket Entry # 7. See

1 Proof of Service filed with the Court. Declaration of Edward E.
2 Corey, ¶¶ 3-5. Pursuant to Fed. R. Civ. P. 12(a)(1)(A),
3 Defendants were required to answer or otherwise respond to
4 Plaintiff's Complaint within twenty (20) days, on or before July
5 7, 2008. See Docket Entry #7. Declaration of Edward E. Corey,
6 ¶6. Defendants have failed to do so, and therefore default should
7 be entered by the Clerk of Courts pursuant to Fed. R. Civ. P.
8 55(a). Declaration of Edward E. Corey, ¶ 7.

9 Fed. R. Civ. P. 55(a) sets forth the procedure for the entry
10 of a default by the clerk, providing: "When a party against whom
11 a judgment for affirmative relief is sought has failed to plead
12 or otherwise defend as provided by these rules and that fact is
13 made to appear by affidavit or otherwise, the clerk shall enter
14 the party's default." See also Dolphin v. Ruiz, 2008 U.S. Dist.
15 LEXIS 37259, at * 1-2 (C.D. Cal. May 6, 2008) ("* * * [O]btaining
16 a default judgment in federal court is a two-step process.
17 Plaintiff must first seek entry of default by the clerk. See Fed.
18 R. Civ. P. 55(a).")

19 Pursuant to Fed. R. Civ. P. 55(a), the court clerk is
20 required to enter the Defendant's default when the fact of
21 default is established by affidavit or otherwise. See Fed. R.
22 Civ. P. 55(a). Elektra Entm't Group, Inc. v. Crawford, 226
23 F.R.D. 388, 2005 U.S. Dist. LEXIS 4813 (C.D. Cal. 2005).

24 In this case, the defaults of Defendants are established by
25 the Proof of Service filed on June 18, 2008, which includes the
26 declaration of process server Clarence Randolph, under penalty of
27 perjury. See Docket Entry # 7. Declaration of Edward E. Corey,
28 ¶ 8. Based on the foregoing, an Entry of Default against

1 Defendants **Tetsuya Watanabe, Oakhills Hardwood Floors, Inc.** and
2 **K&T Associates, Inc.** should be entered by the Clerk at this time.

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4 Dated: July 9, 2008

COREY & COREY

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6 By: Edward E. Corey
7 Attorneys for Plaintiff
8 Shanghai Win-Wing Imp. & Exp.
9 Co., Ltd.
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DECLARATION OF EDWARD E. COREY

I, Edward E. Corey, counsel of record in this matter for Shanghai Win-Wing Import & Export Company, make this declaration in support of the Application for Default.

5 1. I am counsel for Plaintiff Shanghai Win-Wing Imp. &
6 Exp. Co. (hereinafter "Plaintiff") in this litigation captioned
7 Shanghai Win-Wing Imp. & Exp. Co., Ltd. v. Tetsuya Watanabe, et
8 al., in the United States District Court, Northern District of
9 California (San Francisco Division), Case No. 3:08-cv-02031-SC
10 (hereinafter "Watanabe Litigation"), and have personal knowledge
11 of the procedural facts of that case.

12 2. On April 18, 2008, Plaintiff filed a Complaint against
13 Defendants Tetsuya Watanabe, Oakhills Hardwood Floors, Inc. and
14 K&T Associates, Inc. (hereinafter collectively "Defendants") in
15 this matter. See Docket Entry #1.

16 3. As demonstrated by the Proof of Service, filed on June
17 18, 2008, which includes the signed declaration of process server
18 Clarence Randolph, on June 14, 2008 at 12:10 p.m., Mr. Randolph
19 personally served the Summons, Complaint, Certificate of
20 Interested Parties and Order Setting Initial Case Management
21 Conference upon Donny Smith, as the "person in charge of office"
22 at 1647 Willow Pass Road, Concord, CA 94520.

23 4. Upon information and belief, and as confirmed by skip
24 tracing, 1647 Willow Pass Road, Concord, CA 94520, is the current
25 residential address of Tetsuya Watanabe.

26 5. As such, pursuant to Fed. R. Civ. P. 4(e)(2)(B),
27 Plaintiff completed service on June 14, 2008, by leaving a copy
28 of the summons and of the complaint at Tetsuya Watanabe's

dwelling or usual place of abode with somebody of suitable age and discretion.

6. Pursuant to Fed. R. Civ. P. 12(a)(1)(A), Defendants were required to answer or otherwise respond to Plaintiff's Complaint within twenty (20) days, on or before July 7, 2008. See Docket Entry #7.

7. Defendants have failed to do so, and therefore default should be entered by the Clerk of Courts pursuant to Fed. R. Civ. P. 55(a), as is further demonstrated by the docket.

10 8. In this case, the defaults of Defendants are
11 established by the Proof of Service filed on June 18, 2008 (which
12 included a signed declaration of the process server), and is
13 further established by the Court's docket, and is further
14 established by this affidavit.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 9th day of July, 2008 at Los Angeles,
California.

Edward E. Corey, Declarant.

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6 Counsel for SHAGHAI WIN-WING IMP. &
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17 ASSOCIATES, INC.) **EDWARD COREY IN SUPPORT**
18 Defendants.) **THEREOF**

19 It appearing from the records in the above-entitled
20 action that summons has been served upon the defendants named
21 below, and it further appearing from the affidavit of counsel for
22 Plaintiff, and other evidence as required by F.R.C.P. 55(a), that
23 the defendants named below have failed to plead or otherwise
24 defend in said action as directed in said Summons and as provided
25 in the Federal Rules of Civil Procedure:

26 Now, therefore, on the request of counsel, the DEFAULT
27 of the following named defendants is hereby entered:

28 **Tetsuya Watanabe, Oakhills Hardwood Floors, Inc. and K&T**

1 **Associates, Inc.**
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Dated: _____, 2008

By: _____
Deputy Clerk